



The United Voice of Retailing

Arizona: An Update on E-Fairness

August 13, 2012

A presentation to the Governor's TPT Simplification Task Force

“The greatest challenge facing retail today.”

- The retail community is united in support of solutions to address the unfair tax advantage of online-only retailers.
- Current policy and law has not kept pace with the changing retail environment.
- Retailers have been forced to reduce staff and locations in response to the growth in online-only retail.
- Tax fairness sentiment is much higher in states with significant online-only distribution and fulfillment centers.
- Retailers thrive on competition...fair competition.



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Arizona Legislative Efforts

- 2011: Affiliate Nexus legislation (HB 2551)
 - Clarified that a seller would be responsible for the collection of TPT if they contract with an in-state person who receives a commission or other remuneration; or that refers potential customers to the Seller through an Internet website or any other means.
 - *Held in Rules*

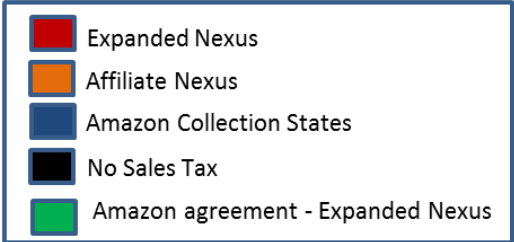
Arizona Legislative Efforts

- 2012: Expanded Nexus (SB 1338/SB 1170 S/E)
 - Presumes a person to have sufficient Arizona business activity requiring a TPT License to assess and collect the appropriate tax, if any commonly controlled person maintains a distribution or fulfillment center, warehouse, office or similar location in-state.
 - Rebutts the presumption to obtain a TPT License by showing in-state activity is not significantly connected with the person's ability to establish or maintain a market for sales.
 - Retroactive to January 1, 2006, requires DOR to waive payment of all TPT, the related interest and penalties, for any person meeting the presumption of sufficient sales activity that requires a Privilege License.
 - *Held in Approps*



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State E-Fairness Laws



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State E-Fairness Laws

- The historic determination of nexus has been distorted by online-only retail.
- The Supreme Court's *Quill* decision addressed catalog sales and the ability “to establish or maintain a market for sales”.
- The States have specific issues relating to the physical presence of online-only retailers and the use of commissioned salespersons (affiliates).
- Solutions to the issues facing states are separate from the pursuit of a federal solution.
- The timeliness of state solutions is critical.



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Federal Activity re: Online Sales

- Two primary pieces of legislation:
 - H.R. 3179, Marketplace Equity Act
 - S. 1832, Marketplace Fairness Act
- Requires the states to enact implementing legislation.
- Likelihood and timing of passage are unknown.
- Strong support among retailers and large online-only retailer.

Conclusion

- Questions?
- Discussion
- Applause

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